

1 ERSKINE & TULLEY
2 A PROFESSIONAL CORPORATION
3 MICHAEL J. CARROLL (ST. BAR #50246)
4 220 MONTGOMERY STREET, SUITE 303
5 SAN FRANCISCO, CA 94104
6 TELEPHONE: (415) 392-5431
7 FACSIMILE: (415) 392-1978

8 ATTORNEYS FOR PLAINTIFFS

9

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13
14
15
16

11 BOARD OF TRUSTEES OF THE SHEET 12 METAL WORKERS, et al., 13 Plaintiffs, 14 vs. 15 MTB INC., etc., 16 Defendant. 17) NO. C 07 3204 PJH 18) DECLARATION OF 19) MICHAEL J. CARROLL 20) IN SUPPORT OF MOTION 21) <u>FOR DEFAULT JUDGMENT</u> 22) 23) 24) 25) 26) 27) 28)
---	--

17
18 I, MICHAEL J. CARROLL, declare:

19 1. I am one of the attorneys for plaintiffs in this
20 action and if called as a witness, I could competently testify to
21 the following facts:

22 2. Plaintiffs have incurred costs in the amount of
23 \$430.00 in the prosecution of this action. This figure consists
24 of the following items:

25 a. The filing fee of \$350.00;
26 b. The cost for the attempt to effect service of
27 the Summons and Complaint and other documents
28 from the initial filing of this case in the

1 amount of \$80.00, which I have paid.

2 Attached as Exhibit 5 is the invoice for item b. above.

3 3. This office commenced work on this employer's
4 delinquency in May 2007 under the delinquency procedures
5 established by the trust funds. Demand for payment was made by me
6 by telephone contact with Gabriela Keane on June 12, 2007.

7 4. This legal action was filed on June 18, 2007.
8 Defendant failed to appear and defendant's default was entered by
9 the Court on September 26, 2007. The Court's jurisdiction is
10 founded on 29 U.S.C. § 185(a) and 29 U.S.C. 1132.

11 5. Declarant has expended in excess of 4 hours in the
12 prosecution of this action, including the preparation of a Motion
13 for Entry of Default with Supporting Declaration and Proposed
14 Notice of Entry of Default, an ExParte Application with Supporting
15 Declaration and Proposed Order to Continue the Case Management
16 Conference, and letter to the Court regarding status of the case,
17 and this motion. Erskine & Tulley's billing rate in this matter
18 is \$185.00 per hour for a total of \$740.00.

19 6. Exhibit 2 to the Maraia Declaration is the
20 Declaration of Trust as amended of the Pension Trust; all other
21 trusts contain the same provisions for court costs and attorneys
22 fees, see pages 12-13.

23 7. The applicable interest rate is 15%. The Trust
24 Agreement, Exhibit 2, states at page 9 that "... both the
25 contribution and the liquidated damages attributable thereto shall
26 bear interest at a rate to be determined from time to time by
27 resolution of the Board..."

28 8. Attached hereto as Exhibit 6 are excerpts from the

1 Ways & Means Committee Meeting of May 1, 2001 when the trustees
2 readopted the 15% rate that they have had since the 1980's. I was
3 present at this meeting and the minutes accurately reflect what
4 occurred. On June 1, 2001 the full board approved the action taken
5 on May 1st in committee. I was present at that meeting as well.

6 9. ERISA provides that a judgment on behalf of a
7 fiduciary for unpaid contributions to a multiemployer plan shall
8 include interest on the unpaid contributions, and the interest "...
9 shall be determined by using the rate provided under the plan ..." 10
29 U.S.C. 1132 (g) (2). The award is mandatory. Paragraph (2)
11 states that the Court shall award the plan interest. See Laborers
12 Clean-Up Contract v. Uriarte Clean-Up Service 736 F.2d 516, 522
13 (9th.Cir.1984).

14 10. In this case interest has only been calculated on
15 the unpaid contributions. Higher rates of interest have been
16 awarded in other cases notwithstanding the argument that the rate
17 set by the trustees constituted a penalty. Iron Workers District
18 Council v. Hudson Steel Fabricators 68 F.3d 1502 (2nd. Cir. 1995).
19 See cases listed on page 1508.

20 I declare under penalty of perjury that the foregoing is
21 true and correct.

22 Executed on January 22, 2008 at San Francisco,
23 California.

24 _____/s/ Michael J. Carroll
25 MICHAEL J. CARROLL
26
27
28